HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.22930 of 1999

Dated 22nd day of October, 2007

Between:

Sirpur Paper Mills Limited .. Petitioner

And

The Government of Andhra Pradesh,
Rep. by Principal Chief Conservator of Forests,
Aranya Bhawan, Saifabad, Hyderabad
and two others .. Respondents

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O R D E R:

This writ petition is instituted seeking a mandamus to declare the action of the respondents in demanding Rs.2,72,909/- including interest from the petitioner towards penal selling price for transporting 17,804 bamboo bundles beyond 31.3.1993, as arbitrary and illegal.

The case of the petitioner-company is that it is engaged in the process of manufacturing paper. Having entered into an agreement with the Forest officials on 1.10.1991 for a period of five years, the petitioner purchased 17,804 bundles of bamboo from the Forest Range Officer, Tadlapet on 10.3.1993 under a Charge Certificate and transported them in the month of April, 1993 and paid selling price. Now, its grievance is that after 2½ years i.e. on 5.8.1995, the 2nd respondent-Divisional Forest Officer, demanded the petitioner to pay penal selling charges for 17,804 bundles i.e. 144.30 Metric tones of bamboos delivered on 10.3.1993. The petitioner submitted its explanation stating that the material handed-over to it on 10.3.1993 belongs to the lease year 1992-93, and hence, the transportation made by the petitioner in April, 1993 is within the time, and therefore, it is not liable to pay penal selling price and interest. The 3rd respondent informed the petitioner on 15.7.1996 that it should pay the demanded amount of Rs.1,75,700/- and passed an order dated 12.8.1997 rejecting the petitioner's representation and directing it to pay the amount.

Heard the learned counsel for both the parties and perused the material placed on record.

The agreement between the parties was entered into on 1.10.1991 for a period of 5 years. The Forest Department reckons its

year as commencing from 1st October of every year and ending by 30th September of the next year which is called Lease Year. If no bamboo was lifted within that period, penal interest is to be charged. However, in the instant case, according to the learned counsel for the petitioner, the bamboo itself was supplied on 10.3.1993 and the same was lifted immediately thereafter and the amount was also paid in the month of April, 1993. Though the respondents dispute this aspect they have not stated anything about it in the counter affidavit, and hence, this Court directed the Government Pleader to produce the records. Even from a perusal of the records, it is not clear as to when the stock was supplied. If the stock of bamboo was supplied on 10.3.1993 as contended by the learned counsel for the petitioner, in my considered view, the respondents are not entitled to collect penal interest. However, if the same was supplied sometime prior to September, 1992 and the same was not lifted within the period of six months as per the terms of the contract, definitely, the petitioner is liable to pay the demanded amount.

In the circumstances, instead of deciding this issue, this Court is of the view that the same can be decided by the respondents as to whether the stocks were supplied to the petitioner on 10.3.1993 as contended by the learned counsel for the petitioner or before September, 1992. Section 70 of the A.P. Forest Act, 1967, which deals with recovery of money due to the Government, clearly envisages that the recovery shall be made only after due ascertainment. Hence, the respondents are hereby directed to ascertain as to whether the stocks of bamboo were supplied prior to September, 1992 or on 10.3.1993 and thereafter, pass appropriate orders. The petitioner shall also be given an opportunity to establish as to when actually the stock of bamboo was supplied to it.

In terms of the above direction, this writ petition is disposed of. No costs.

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22.10.2007

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